

Oct 25, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELADIO PEREZ-GUTIERREZ,

Defendant.

NO: 2:19-CR-58-RMP

ORDER OF DISMISSAL WITHOUT
PREJUDICE

BEFORE THE COURT is a motion by the Government to dismiss the Indictment in this case without prejudice pursuant to Fed. R. Crim. P. Rule 48(a), ECF No. 37, and a motion by Defendant Eladio Perez-Gutierrez to dismiss the Indictment with prejudice for deficiencies in the underlying removal and a consequent failure to state an offense, ECF No. 35. Defendant responded that he does not oppose the Government's motion. ECF No. 38.

When a defendant consents to the government's motion to dismiss, the district court's discretion to deny the government's motion is tightly constrained, if it exists at all. *See Rinaldi v. United States*, 434 U.S. 22, 29 n. 15 (1977) (per curiam)

1 (reserving judgment on the question of whether a district court has any discretion to
2 deny an uncontested motion to dismiss under Rule 48(a)); *United States v. Garcia-*
3 *Valenzuela*, 232 F.3d 1003, 1008 (9th Cir. 2000); *United States v. Gonzalez*, 58 F.3d
4 459, 462 (9th Cir. 1995). The only circumstance that the Ninth Circuit has thus far
5 articulated as a basis to reject an uncontested motion to dismiss without prejudice
6 from the government is when the prosecution's reasons for dismissal are "clearly
7 contrary to manifest public interest." *Gonzalez*, 58 F.3d at 461.

8 The Court notes Defendant's consent to the Government's motion for
9 dismissal and, further, does not find an indication that dismissal without prejudice
10 under Rule 48(a) contravenes the "manifest public interest." *See Gonzalez*, 58 F.3d
11 at 461. Accordingly, **IT IS HEREBY ORDERED:**

12 1. The Government's Motion to Dismiss Pursuant to Rule 48(a), **ECF No.**
13 **37**, is **GRANTED**.

14 2. Defendant's Motion to Dismiss, **ECF No. 35**, is **DENIED AS MOOT**,
15 and the hearing on that motion is **STRICKEN**.

16 3. The Indictment, ECF No. 15, is **dismissed without prejudice**.

17 4. All upcoming deadlines and hearings are vacated.

18 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
19 Order and provide copies to counsel, and close this case.

20 **DATED** October 25, 2019.

21 s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge